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19 Attorneys for Plaintiff CAI RAIL, INC.

20 IN THE UNITED STATES DISTRICT COURT
21 FOR THE NORTHERN DISTRICT OF CALIFORNIA

22 CAI RAIL, INC.,) Civil Action No.
23 a Delaware Corporation,)

24 Plaintiff,)
25 vs.)

26 **COMPLAINT**
27 **FOR BREACH OF CONTRACT**

28 SUPERIOR SILICA SANDS LLC,)
a Texas limited liability company,)

Defendant.)

COMPLAINT

1 CAI Rail, Inc. (“CAI”) hereby brings this Complaint for breach of contract
2 against Superior Silica Sands LLC (“Superior” or “SSS”) and states as follows:
3

4 **PARTIES**

5 1. CAI is now and at all times material was a Delaware corporation with
6 its principal place of business in San Francisco.
7

8 2. Superior is now and at all times material was a Texas Limited
9 Liability Company with its principal place of business in Fort Worth, Texas.
10

11 **JURISDICTION, VENUE AND GOVERNING LAW**

12 3. CAI as Lessor, and Superior as Lessee as of November 7, 2014
13 entered into a Master Lease and related agreements (“Lease”) for railroad cars.
14 The Master Lease, **Exhibit A hereto**, states that Emerge Energy Services LP
15 (“EMES”), a Delaware limited partnership, is also a party to the Lease and that
16 “[e]ach of SSS and EMES shall hereinafter be jointly and severally liable for the
17 obligations of Lessee hereunder, and agree to be bound by any actions or
18 decisions of any of the foregoing required or permitted under this Master Lease.”
19 EMES therefore is not a necessary party to this suit. CAI incorporates **Exhibit A**
20 **hereto** into this Complaint by reference.
21
22
23

24 4. The Master Lease provides as follows for the exclusive venue and
25 jurisdiction of litigation concerning the Lease to be in and with this Court, and that
26 Superior waives any jury trial right: “(b) the site of any litigation concerning any
27
28

COMPLAINT

1 provision of this Master Lease shall be the appropriate state or federal court,
 2 located in the City of San Francisco, State of California, as selected by Lessor from
 3 time to time. Lessee hereby (i) consents to the exclusive jurisdiction of the state
 4 and federal courts therein located and (ii) waives any defense that such jurisdiction
 5 is not a convenient forum for litigation of disputes; and (c) . . . WAIVES ANY
 6 RIGHT TO TRIAL BY A JURY as to any such litigation.” (emphasis in original).
 7
 8

9 5. Jurisdiction is further proper in this Court because there is diversity
 10 jurisdiction pursuant to 28 U.S.C. Section 1332 in that the parties are citizens of
 11 and have their principal business places in different states and the amount in
 12 controversy exceeds \$100,000.
 13
 14

15 **THE CONTRACT IS VALID AND ENFORCEABLE**

16 6. The Master Lease, **Exhibit A hereto**, further provides as follows:

17 1. LEASE. Lessor hereby leases to Lessee, and Lessee hereby leases from
 18 Lessor, the railroad cars (herein referred to collectively as "Cars" and
 19 individually as "Car") described in schedules hereto, executed by the parties
 20 concurrently herewith or at any time hereafter (herein referred to collectively
 21 as "Schedules" and individually as Schedule"). Each Schedule shall
 22 incorporate the terms of this Master Lease by reference and shall constitute a
 23 separate and distinct lease of the Cars subject thereto. The terms of each
 24 Schedule, if and to the extent they are different from the terms set forth
 25 herein, shall modify the terms set forth herein as to the Cars subject thereto.
 26 Each Schedule is intended to be a lease for federal income tax purposes and
 27 no party will take any action inconsistent therewith.
 28

1 The Schedules to the Master Lease are **Exhibits B** (November 7, 2014), **C**
2 (February 17, 2016) and **D** (January 17, 2019) hereto. CAI incorporates **Exhibits**
3 **C through D hereto** into this Complaint by reference.
4

5 7. The Lease (collectively, the Master Lease and Schedules) is signed
6 by all parties and is a valid and enforceable contract.
7

8 8. CAI is as a party to the Lease, a party to bring suit for breach of
9 contract.
10

11 9. CAI duly performed and tendered performance of its contractual
12 obligations. Specifically, CAI tendered performance by providing rail cars to
13 Superior at or near Superior's facilities in Texas, beginning on the date of the
14 Lease and thereafter.
15

16 10. Superior breached the contract by failing to pay monthly rent for each
17 Car which CAI had provided to Superior under the Lease and to make payment as
18 the Lease provides, despite notice and demand. Specifically, Superior breached
19 the requirements of the Lease including the following, as set out in the Master
20 Lease, **Exhibit A hereto**:
21

22
23 3. RENT.

24 (a) Lessee shall pay Lessor monthly rent for each Car as set forth in the
25 applicable Schedule (the "Rent"), in advance on the first day of each full
26 calendar month during the Term, plus pro rata Rent for the portion of the
27 month in which the Date of Arrival occurs (such pro rata Rent shall be paid
28

COMPLAINT

1 on the first day of the following month, together with the Rent due for that
2 month).

3 (b) Lessee shall pay Rent, amounts specified herein as "Additional Rent"
4 and other amounts due hereunder to Lessor in U. S. currency, at Lessor's
5 principal office as indicated on the last page of this Master Lease, or to such
6 other address or payee as Lessor may, from time to time, direct in writing.
7 Lessee's obligations to pay Rent, Additional Rent and other amounts due
8 hereunder shall be absolute and unconditional and not subject to any
9 abatement, setoff, counterclaim, defense, recoupment, deduction, reduction
10 or offset of any kind or any reason whatsoever. Rent shall be payable by
11 Lessee without invoicing, notice or demand by Lessor.

12 (c) Lessee shall pay Lessor, without demand, interest on any overdue
13 installment of Rent, Additional Rent or other amount due to Lessor under
14 this Master Lease or any Schedule from the due date thereof until paid in
15 full, calculated at the rate of 10% per annum or the highest rate permitted by
16 law as compensation for late payment. Any amount payable hereunder upon
17 demand by Lessor shall be overdue if not paid within three days after
18 demand.

19 11. The Lease requires Superior as Lessee to pay Rent and other charges
20 to CAI as Lessor. The Master Lease, Exhibit A hereto states in pertinent part
21 that:
22

23 If Lessee (i) fails to pay when due any Rent, Additional Rent or other
24 amount required to be paid under any Schedule [of the Lease] and such
25 failure continues for a period of five (5) days . . . then, and in such event,
26 Lessee shall, without further notice, be in default and Lessor may exercise
27 anyone or more of the following remedies: (i) sue for and recover (A) all
28 Rent, Additional Rent and other amounts as they become due, and (at
Lessor's election) . . . (C) the net present value of all amounts as may
thereafter accrue for the balance of the Term (in determining net present
value, Lessor shall use a discount rate equal to [the one year Treasury
Constant Maturity rate as published in the Selected Interest Rates table of
the Federal Reserve statistical release H.15-(519) for, at Lessor's election,

1 either (A) the week prior to the Delivery Date for the Cars or (B) the week
2 the Lessor declares the Master Lease in default]

3 12. The Lease (Master Lease, **Exhibit A hereto**) further provides that
4 Lessee Superior shall pay CAI all costs and expenses, including reasonable
5 attorneys' fees and expenses and court costs, which CAI incurs in exercising any of
6 its rights or remedies under the Lease or enforcing any Lease provisions.
7

8 13. The Lease (Master Lease, **Exhibit A hereto**) further provides that
9 Lessee Superior shall pay CAI, without demand, interest on any overdue
10 installment of Rent, Additional Rent or other amount due to CAI under the Lease
11 from the due date thereof until paid in full, calculated at the rate of 10% per annum
12 or the highest rate permitted by law as compensation for late payment.
13
14

15 14. In the Schedule to the Master Lease dated January 17, 2019 (**Exhibit**
16 **D hereto**) CAI as Lessor and Superior as Lessee agreed further in pertinent part
17 that:
18

19 Upon execution of this Agreement, Lessee's obligation to pay the monthly
20 Rent and other charges applicable to each Car is absolute and unconditional,
21 and shall not be subject to any abatement, reduction, set-off, defense,
22 counterclaim, interruption, deferment or recoupment. Each Rent or other
23 payment made by Lessee hereunder shall be final and Lessee shall not seek
24 to recover all or any part of such payment from Lessor. The Rent and other
25 sums payable by Lessee hereunder shall be paid without notice or demand
26 and Lessee's commitment to make timely payment for the full Term
27 hereunder for all Cars that have been accepted by Lessee in accordance with
28 Section 4 ("Inspection") of the Master Car Lease Agreement is absolute and
unconditional.

B. Grant CAI further and other proper relief.

Dated: May 30, 2019

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